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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SACRAMENTO

FAIR POLITICAL PRACTICES COMMISSION, a state agency, Plaintiff, v. SANTA ROSA INDIAN COMMUNITY OF THE SANTA ROSA RANCHERIA dba PALACE BINGO AND PALACE INDIAN GAMING, and DOES I-XX, Defendants.	Case No. 02AS04544 DECLARATION OF ROBERT M. STERN IN SUPPORT OF OPPOSITION TO MOTION TO QUASH Date: February 20, 2003 Time: 9:00 a.m. Dept: 54 Judge: Hon. Joe S. Gray Action Filed July 31, 2002 No Trial Date Set

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I, Robert M. Stern, declare:

1. I am the President of the Center for Governmental Studies ("CGS"), a position I have held since 2000. I have served as General Counsel of CGS and its predecessor, the Center for Responsive Government, from its founding in 1983. CGS is a nonprofit, nonpartisan 501(c)(3) public charity, which studies and helps implement innovative approaches to improving social problems and the processes of self-government. CGS' Political Reform Project, which I lead, includes research, strategic consulting, legislative drafting and publication in the areas of campaign finance, public financing, uniform filing and disclosure, ethics laws, ballot initiatives, judicial elections, and term limits. Our motto is "making democracy work by reforming campaign finance and governance."

2. I am submitting this declaration in support of the Fair Political Practices Commission's opposition to the motion to quash filed by the Santa Rosa Indian Community of the Santa Rosa Racheria.

3. Before joining CGS, I was the first General Counsel of the California Fair Political Practices Commission ("FPPC"), serving in that position from January 1975 through November 1983, when I left to join CGS. Prior to joining the FPPC, I served as the Elections Counsel to the California Secretary of State, and as Committee Counsel to the California State Assembly's Election and Reapportionment Committee. I received my J.D. in 1969 from Stanford Law School.

4. I was the principal co-author of Proposition 9, the statewide ballot initiative passed by the voters at the November 1974 general election. Proposition 9 enacted the Political Reform Act of 1974 ("the Act"), and established the FPPC.

5. Proposition 9 was drafted to strengthen the relatively weak campaign finance disclosure system then in place. The drafters of Proposition 9 believed that disclosing the sources of money used to influence an election or a piece of legislation would help deter corruption and the appearance of corruption. Indeed, as we stated at page 2 of the amicus brief filed by the FPPC in the *Buckley v. Valeo* case (described more fully below at paragraph 8 of this declaration), "[T]he various laws enacted by the states represented here (and doubtless, by other states as well) represent valid efforts to protect the integrity of their political systems." A true and correct copy of the amicus brief, of which I was a co-author, is attached as Exhibit A to this declaration.

6. Attached as Exhibit B to this declaration is a true and correct copy of the ballot pamphlet materials for Proposition 9, including the arguments in favor of its passage. The very first line of the argument in favor of Proposition 9 was this: "VOTE FOR HONESTY AND INTEGRITY IN CALIFORNIA GOVERNMENT!" The drafters and proponents of Proposition 9 were concerned with the corrupting influence of money on politics, and of the undue influence exerted by "big money from wealthy individuals and wealthy organizations." The counter to this, we believed, was disclosure. In this belief, we were guided by the words of Louis Brandeis: "'Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.'" L. Brandeis, Other People's Money 62, quoted in *Buckley v. Valeo, 424 U.S. 1, 67 (1976).*

7. Among the most important words in the Political Reform Act are those that state it was intended to accomplish the following purpose, among others: "Receipts and expenditures in election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited." Gov. Code section 81002(a). Similarly, with respect to lobbyists, we hoped to accomplish the following: "The activities of lobbyists should be regulated and their finances disclosed in order that improper influences will not be directed at public officials." Id. section 81002(c). Although the Political Reform Act has undergone many changes since its initial passage, its core – full, accurate and timely disclosure of campaign contributions and lobbyist payments – remains intact. Disclosure of campaign contributions and lobbyist payments is not an end in itself, but rather a means to foster the integrity of California's political system.

8. The drafters of Proposition 9 believed that the campaign disclosure rules would and should apply equally to all contributors to California campaigns. However, shortly after passage of Proposition 9, the U.S. Supreme Court took up a challenge to the constitutionality of the then newly-enacted Federal Election Campaign Act, which eventually resulted in issuance of the opinion in *Buckley v. Valeo, 424 U.S. 1 (1976).* One issue that arose in the *Buckley* litigation was whether the campaign contribution disclosure laws were unconstitutional when applied to minor party candidates who feared that their contributors would be subject to harassment if their names were disclosed. The FPPC filed an amicus curiae brief in the U.S. Supreme Court, which I signed, arguing that "minor party

candidates are not exempt from disclosure" and that "the interests served by disclosure are so compelling that an exemption for minority parties is unthinkable." The U.S. Supreme Court nonetheless ruled that minor party candidates must be given an opportunity to demonstrate that a reasonable probability exists that compelled disclosure of the names of party contributors would subject them to threats, harassment or reprisals. *Buckley, 424 U.S. at 74.*

9. After issuance of the *Buckley* opinion, the FPPC noticed for public hearing a proposed regulation establishing an orderly procedure by which applicants for an exemption from disclosure might offer proof sufficient to meet the *Buckley* test. In addition, the FPPC held a joint hearing with an administrative law judge, pursuant to the Administrative Procedures Act, to hear testimony on a request for exemption by a school board candidate from the Communist Labor Party. Believing that the hearing had produced uncontroverted proof sufficient to meet the *Buckley* test, the FPPC granted a very limited and conditional exemption to the candidate.

10. The public and legislative outcry over the FPPC's granting of that exemption was swift and loud. In the spring of 1977, mere weeks after passage of the regulation establishing the exemption procedure, the Legislature introduced Assembly Bill 453 to expressly prohibit the FPPC from exempting any person from any of the requirements of the Political Reform Act. A group known as the People's Lobby, which had been one of the proponents of Proposition 9, urged passage of AB 453 in a letter which stated, in part, "It was the intent of People's Lobby – proponents of the Political Reform Act – that Proposition 9 should apply to everyone equally. It isn't fair to require some people to comply with the law while exempting others. Exempting one person from the act will open the door to other exemptions and will interfere with the public's right to be informed." A true and correct copy of the People's Lobby letter is attached as Exhibit C to this declaration. AB 453 easily passed both houses of the Legislature.

11. As AB 453 awaited signature or veto by the Governor, the Los Angeles Times printed an editorial urging the Governor to sign it, opining that "The purpose of disclosure is to halt the corrupting influence of large-scale contributions; to exempt one candidate from reporting them is to open the door to a system of random enforcement that would invite abuse…. It is also a fact of our political life that major party candidates have been known, in the past, to channel funds into the

campaigns of minor candidates who stood no chance of winning but who could drain votes away from the secret donor's opponent. Exemptions would conceal such shoddy practices." A true and correct copy of the Los Angeles Times editorial of August 24, 1977, found in the Governor's Bill File for AB 453, is attached as Exhibit D to this declaration. The bill's primary author, Assemblyman Mike D. Antonovich, also urged the Governor's signature, writing that he "believe[d] that principles of fundamental fairness require that these disclosure requirements be applied equally to all candidates and contributors. Certainly it is as much in the public interest to know who is funding the Communist Labor Party as it is to disclose the sources of Democrat or Republican party funds." A true and correct copy of Assemblyman Antonovich's letter of August 12, 1977 to Governor Edmund G. Brown, Jr., is attached as Exhibit E to this declaration. AB 453 was signed into law on August 27, 1977. It is codifed as Government Code section 84400.

12. As the President of the CGS, I spend a great deal of time investigating and analyzing disclosure systems in the 50 states, the federal government and foreign governments. Recently, CGS joined forces with the UCLA School of Law and the California Voter Foundation to form "The Campaign Disclosure Project." The Project, funded by a grant from The Pew Charitable Trusts, will classify and evaluate the campaign disclosure laws of the 50 states, and design and promote a set of uniform standards and model laws for state reporting and disclosure practices, based on our survey of the 50 states. That work is a natural outgrowth of my many years of involvement in the Council on Governmental Ethics Laws ("COGEL"). COGEL is a professional organization for government agencies, organizations, and individuals with responsibilities or interests in governmental ethics, elections, campaign finance, lobby laws and freedom of information. Every year, COGEL puts on a conference that draws participants from the leading campaign finance, ethics and FOIA agencies from throughout the United States and Canada. Participants in the three-day conference attend a variety of panels, speeches, and other gatherings intended to foster shared knowledge among the agencies. I help plan and attend the COGEL conference every year and frequently lead a number of panel discussions and presentations, including updates on the electronic campaign finance disclosure systems of the various states. I am very familiar with the disclosure laws of other states and the federal government.

13. California's disclosure system is among the best. The reasons for that are several. First, the disclosure is comprehensive. Full disclosure is required of all candidates, ballot measure committees, political action committees, and major donors (i.e., those who contribute $10,000 or more to California candidates and committees in a single year). Second, the disclosure is timely. It is intended to, and does, get vital contribution information to the voters prior to the election. Some aspects of the system were designed for "double-reporting" by the recipient and maker of the contribution. This double-reporting was a deliberate safeguard meant to ensure that candidates and committees file accurate disclosure reports.

14. One of the most important aspects of California's disclosure system is in its enforcement. The drafters of Proposition 9 believed that a strong, fair and effective enforcement program was key to ensuring accurate disclosure of campaign contributions and lobbyist payments. The FPPC has one of the toughest and most effective enforcement mechanisms among all state and local campaign finance agencies. Its independent prosecutors can file cases without waiting for assistance or approval from elected district attorneys or the state attorney general's office. Moreover, unlike the Federal Election Commission, the FPPC prosecutors can proceed without awaiting formal commission action (although formal action is required to approve stipulated fines or to proceed with a civil action in court). The FPPC has far more enforcement resources than do most other state campaign finance agencies. As I have learned by reviewing the experiences of many other state agencies and the Federal Election Commission, campaign finance systems flounder without the backing of an adequate enforcement program.

14. Disclosure in California has increased greatly with technological improvements and subsequent amendments to the Political Reform Act. Now many state candidates and committees file their contribution reports electronically, where they are instantaneously disclosed on the CalAccess web-based system maintained by the California Secretary of State. The CalAccess system also has instant disclosure of state lobbyist reports. The CalAccess system, with its many search capabilities, allows anyone with a computer to conduct serious and sophisticated research into the flow of money in California politics. Its use has greatly enhanced voters' access to and use of campaign and lobbyist reports.

16. I have read the Santa Rosa Rancheria's motion to quash. I believe Santa Rosa's claim of sovereign immunity from the Political Reform Act threatens the continued viability of California's campaign disclosure system. If a major contributor such as the Santa Rosa tribe is exempted from disclosure, then no voter can ever be sure he or she truly knows all the sources of money used to fund a particular campaign or to secure passage of legislation. This runs directly counter to the state's efforts over the past 26 years to enhance its comprehensive campaign and lobbyist reporting system.

17. I am particularly concerned that Santa Rosa would be able to fund independent expenditure campaigns without revealing themselves as the source. With the passage of Proposition 34, independent expenditures in competitive legislative and statewide races have become the way that wealthy special interests can influence elections. Should Santa Rosa be exempted from any reporting, it could make huge amounts of independent expenditures without ever disclosing that it made them, which candidates it was specifically supporting or opposing, and where and how the independent expenditures were made. This would create a gaping loophole in our disclosure laws. The tribe also could serve as a conduit for money that others desire be used to secretly influence an election campaign.

18. Finally, if taken to an extreme, Santa Rosa's claim that it is not a "person" under the Political Reform Act could lead to claims by state politicians that they are free to accept money from the Santa Rosa Rancheria tribe without themselves reporting the sums.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and, if called to testify, I could and would testify competently thereto.

Executed this 3 day of February, 2003 at Los Angeles, California.

ROBERT M. STERN